principle, and apprehend there was no foundation for the remark of his Lordship. He may have had an idea that the patent would have been defective in not specifying some visible structure as the invention; but that is very different from patenting a principle. The case has little or no bearing on that subject.

From this discussion and examination of the cases the following conclusions are legitimately drawn:—

1. Every discoverer of a new and useful application of any law of nature, any quality of matter, or any mathematical principle, is entitled to a patent for it.

2. It is not necessary to entitle him to a patent, that he should have been the first to search out and make known the law, quality, or principle which he has thus applied. And his having been the first to bring it to light adds nothing to his claims.

3. He will be protected in his right by holding as infringements of his patent all mechanical equivalents for the devices for carrying his discovery into effect, which he has described and designated in his specification as his invention. And he can have no other protection, even though the principle he has applied was first discovered by him.

4. No one can legally specify as his invention, and take out a patent for the exclusive use of any such law, quality, or principle when employed for the same purpose as his. No instance can be found where any such patent has been sustained, and they have been repeatedly pronounced invalid by the courts.

S. H. H.

RECENT AMERICAN DECISIONS.

Supreme Court of New York.

HUNTINGTON *v.* OGDENSBURGH AND LAKE CHAMPLAIN RAILROAD COMPANY.[1]

Where a person employed for a certain term at a fixed salary payable monthly is wrongfully discharged before the end of the term, he may sue for each month's salary as it becomes due; and the first judgment will not be a bar to another action for salary subsequently coming due.

THIS was an action brought to recover for constructive services from the 1st of July to the 1st of September 1866.

[1] We are indebted for this case to Averill & Kellogg, Esqs., the plaintiff's counsel.—EDS. AM. LAW REG.

The plaintiff proved a contract for services as station agent for ten months, from March 1st 1866, at $100 per month, payable monthly; that on the 7th day of June he was discharged without cause; that he had at all times held himself ready to serve under said contract, and frequently tendered his services in pursuance thereof, and that during the time he had no other employment.

The defendant proved that on the 21st day of July 1866 the plaintiff commenced an action against the defendant in a justices' court, to recover services under said contract for the month of *June;* that on the trial the plaintiff proved the contract, his discharge, readiness and offer to serve during said month, and defendant's refusal to employ him, and recovered a judgment for said month's wages.

At the close of the evidence the defendant moved for a nonsuit, on the ground that said judgment in the justices court was a *bar* to this action. By direction of the court, a verdict was entered for the plaintiff for $150, and the case reserved for further consideration.

Averill & Kellogg, for plaintiff.

Brown & Hasbrouck, for defendant.

The opinion of the court was delivered by

JAMES, J.—The single question is, was the judgment rendered before the justice for the wages of the month of June under the contract, a bar to a further recovery for services tendered but not accepted. "It is settled law that only one action can be maintained for the breach of an entire contract, and that a judgment obtained by the plaintiff in one suit may be pleaded in bar of any second proceeding; but the difficulty is, to determine in what cases the contract is entire, and the question becomes much complicated in the consideration of agreements to do specific acts at various prospective periods."

Originally, *debt* was the only action to recover a sum certain; and it was held no action would lie to recover instalments on a bond, *in debt*, until all the instalments were due. But when the action of *assumpsit* was adopted, the rule was modified, and the plaintiff was allowed to proceed on the first default, although a judgment in such action was still held a full satisfaction. But

this rule was further modified by a decision in the King's Bench in *Cook* v. *Wharwood*, 2 Saund. 337, in which it was held—"that when in an action on an award to pay several sums at several times, an action might be brought for each sum when due, that the plaintiff should recover damages accordingly, and have a new action as the other sums became due."

In Massachusetts (*Badger* v. *Titcomb*, 15 Pick. 437), it was held that a contract to do several things at *several* times, is *divisible* in its nature, and that an action of *assumpsit* would lie for every default. A note at 224 marginal paging, 3d ed., of Sedgwick on Damages, purporting to be from the case of *Fowler* v. *Armour*, 24 Alabama 194, says:—"If one contract to serve another for one year at a stipulated sum, payable monthly, and is discharged without any fault on his part, before the expiration of the year, he may treat the contract as still subsisting, and sue in *assumpsit* for wages due according to its terms; or he may consider it rescinded, and sue for unliquidated damages for its breach. If he sue on the contract he can only recover the wages due by its terms before the institution of the suit; if he sue for damages for breach of contract, he is entitled to recover the actual damages sustained up to the trial."

In *Thompson* v. *Wood*, 1 Hilton 93, the plaintiff claimed to recover two months' salary on a hiring by the year, he having been discharged without cause, and being ready and willing to perform; the defendant set up a previous action by plaintiff against defendant, to recover a balance due for services actually rendered, and breach of contract; the latter claim was withdrawn on the trial, and judgment rendered only for the balance due at the time of plaintiff's discharge; and it was held that such judgment was no bar. INGRAHAM, Judge, said: "When an agreement of this kind is broken, the person employed has his election, either to sue for his wages as they become due from time to time, or to bring one action for damages for the breach of the contract. If such action is brought before the term of hiring has expired, and the party recover damages for a breach of contract, such recovery estops him from bringing another action; but if his action is merely to recover the wages due at the time of bringing the action, he is not thereby deprived of his right either to recover wages subsequently becoming payable, or an action for damages for the subsequent breach of the agreement in not employing

plaintiff according to the contract." According to the dictum of this case, the former recovery by the plaintiff here, is no bar to the present action; but the point was not necessary to a disposition of the case, the former recovery having been for services actually rendered before breach.

The defendant cited and relied upon *Colburn* v. *Woodworth*, 31 Barb. 381. The facts there were much like those here, except in the first action the plaintiff in his complaint, in addition to a quarter's wages, claimed damages for a breach of the contract and issue was joined thereon, and a trial had on such pleadings; but the recovery was only for the quarter's wages, no other quarter being due when said action was commenced. The second action was for the second quarter's wages, and the court held the first action a bar, on the ground that in that action the plaintiff had counted for a breach, and that no other action could be maintained on the contract after that.

The real question raised in the present case, is, whether the monthly payments, by the terms of the contract, were several and distinct causes of action, arising as they became due, or whether they were single and entire.

In *Secor* v. *Sturgis*, 16 N. Y. 548, Justice STRONG lays down this rule: "The true distinctions between demands or rights of action which are single and entire, and those which are several and distinct, is, that the former immediately arise out of one and the same act or contract, and the latter out of different acts or contracts. Each contract, express or implied, affords one and only one cause of action. A contract containing several stipulations to be performed at different times is no exception, although an action may be maintained upon each stipulation as it is broken, before the time for the performance of the others, the ground of action being the stipulation, which is in the nature of a several contract."

What then was the contract in this case? It was a hiring at $100 per month. It was therefore a contract containing several stipulations—each stipulation giving a right of action on its breach. There is no doubt the plaintiff could have maintained a separate action for each instalment as it became due, had he not been discharged, but continued to serve. Having been discharged *without cause*, his rights were not lessened; he was not bound to treat the contract as at an end. He *could* have done so, and

brought his action for damages for the breach; or he could have waited for the expiration of the whole time, and brought his action for all the monthly instalments—but he was not bound to do either. *He had the right to treat the contract as still subsisting, and could maintain an action for each instalment as it fell due.* I therefore hold, that the action before the justice was no bar to this, and direct judgment for plaintiff on the verdict.

It is well settled law that an entire contract will support but one action, and a judgment for part only of what the plaintiff might have recovered will be a bar to a second action for the residue. But where the agreement embraces a number of distinct subjects which admit of being separately executed and closed, it must be taken distributively, each subject being considered as forming the matter of a separate agreement after it is so closed: WASHINGTON, J., in *Perkins* v. *Hart*, 11 Wheaton 251; and each default in such case will support an action of *assumpsit;* for although the agreement is one, the performance is several: *Badger* v. *Titcomb*, 15 Pick. 409; *Lord* v. *Belknap*, 1 Cush. 279. Thus *assumpsit* lies for interest due on a promissory note by which interest is payable annually, although the note is not yet due: *Greenleaf* v. *Kellogg*, 2 Mass. 568; *Cooley* v. *Rose*, 3 Id. 221. And in a recent case in Massachusetts it was held that judgment for the interest on such a note was not a bar to a subsequent action for the principal, although it was due when the former action was commenced: *Andover Savings' Bank* v. *Adams*, 1 Allen 28. And in the same state, where the doctrine of the divisibility of contracts has been rather liberally applied, it was held that an acceptance of an order to pay $200 out of the first money of the drawer received by the drawee out of certain claims, binds the acceptor to pay on request from time to time as the money is received, and a judgment recovered against him for part of the sum on his refusal to pay, is not a bar to another action for a further sum subsequently received by him: *Perry* v. *Harrington*, 2 Metc. 368.

So where a contractor for grading a railroad contracted for monthly estimates by defendants' agent of the quantity and value of the work done during the month, four-fifths of which value were to be paid immediately. This was considered as a distinct stipulation for each month's work, and as forming the matter of a separate agreement: *Rodemer* v. *Hazlehurst*, 9 Gill 289.

And in an action of covenant for instalments of money, a former recovery on the same instrument was held not to be a bar where breaches for the instalments now demanded were not specifically assigned in the former suit, and evidence was considered admissible to show that the instalments now sued for had not fallen due and were not included in the former recovery: *Sterner* v. *Gower*, 3 W. & S. 136. See also *Logan* v. *Caffrey*, 6 Casey 200.

And, generally, it may be said that where there is part performance and by the terms of the contract payment may be demanded for that part, an action lies immediately: *Sickels* v. *Pattison*, 14 Wendell 257.

The decision in the principal case, therefore, that where a person is employed for a definite term at a certain salary for the term *payable at shorter periods*, the portions due at each period may be at once sued for, seems to be well founded in principle and supported by

authority. Where, as in the principal case, the employee has been wrongfully discharged during the period for which he was hired, the action is brought on the principle of *constructive service*, a doctrine somewhat peculiar to actions by servants and employees: 2 Smith's Lead. Cases 39. Thus, where a school teacher was employed at a salary of $1200, payable in two payments of $600 each, at the end of each session of five months, and was discharged in three months, a judgment at the end of the first session was held not to bar a second suit for the other payment at the end of the second session: *Armfield* v. *Nash*, 31 Miss. 361. See also *Thompson* v. *Wood*, 1 Hilton 93; *Colburn* v. *Woodworth*, 31 Barbour 381; *Fowler* v. *Armour*, 24 Ala. 199; *Gordon* v. *Brewster*, 7 Wisc. 355; *Booge* v. *Pacific Railroad Co.*, 33 Mo. 212.

The doctrine of constructive service, however, does not permit an employee who has been wrongfully discharged to remain wilfully idle during the period for which he had been engaged. A party injured by a breach of contract is entitled only to such damages as will indemnify him for his *actual loss*, and if he has it in his power to take measures by which his loss will be less aggravated, this will be expected of him. See *Miller* v. *Mariners' Church*, 7 Greenleaf 55, an early and leading case, in which the Supreme Court of Maine laid down this rule with great force. In the case of a servant or other employee, discharged, it is said that "idleness is in itself a breach of moral obligation. But if he continues idle for the purpose of charging another, he superadds a fraud which the law had rather punish than countenance." COWEN, J., in *Shannon* v. *Comstock*, 21 Wendell 462. And see also *Heckscher* v. *McCrea*, 24 Id. 304; *Wilson* v. *Martin*, 1 Denio 605; *Taylor* v. *Read*, 4 Paige 572; *Costigan* v. *Mohawk, &c., Railroad Co.*, 2 Denio 616; *Heim* v. *Wolf*, 1 E. D. Smith 70; *Bradley* v. *Denton*, 3 Wisc. 557.

As a result it may be said that where an employee for a fixed period at a salary for the period, payable at intervals, is wrongfully discharged, he may pursue any one of four courses:—

1. He may sue at once for breach of contract, in which case he can only recover his damages up to the time of bringing suit, and judgment will be a bar to any further action: *Colburn* v. *Woodworth*, 31 Barb. 381; *Booge* v. *Pacific Railroad Co.*, 33 Mo. 212.

2. He may wait till the end of the contract period and then sue for the breach. *Primâ facie* he will be entitled to his full wages or salary for the whole period, but defendant, to reduce damages, may show what he has earned or might reasonably have earned from his discharge to the end of the contract period: *Thompson* v. *Wood*, 1 Hilton 93; *Taylor* v. *Read*, 4 Paige 572; *Costigan* v. *Mohawk, &c., Railroad Co.*, 2 Denio 616; *Gordon* v. *Brewster*, 7 Wis. 355.

3. He may, as in the principal case, treat the contract as existing and sue at each period of payment for the salary then due, subject, as in the preceding case, to a reduction by the amount of what he has earned or might have earned in the mean time by other employment.

4. He may treat the contract as rescinded and sue immediately on a *quantum meruit* for the services performed. But in this case he can recover only for the time he *actually* served: 2 Smith's Lead. Cases 39; *Note to Cutter* v. *Powell*.

J. T. M.